

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>MICHAEL MCKENZIE, individually and doing business as AMERICAN IMAGE ART, an unincorporated d/b/a,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ARTISTS RIGHTS SOCIETY, INC., and JANET HICKS,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CIVIL NO. 1:22-cv-01619-MKV</p>
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DECLARATION OF JOHN J.E. MARKHAM, II

I, John J.E. Markham, II, declare under penalty of perjury as follows:

1. I am a member of the Bar of this Court and a partner at the firm of Markham Read Zerner LLC, attorneys for Plaintiff in the above-entitled action. The facts stated herein are based upon my own personal knowledge and if called upon to do so I could and would testify competently to the statements set forth below.

2. Back on December 1, 2021, before filing this lawsuit on behalf of our client, the Plaintiff, I emailed attorney Scott Sholder and described to him the general substance of the lawsuit we were planning to file and invited him to discuss the matter to see if the dispute could be resolved without litigation. I contacted attorney Sholder because I was aware that Janet Hicks appeared for a deposition in another lawsuit involving Plaintiff, Michael McKenzie, and that attorney Sholder represented her at that deposition. That case, pending in this district, is *Morgan Art Foundation Ltd. v. McKenzie, et al.*, 1:18-cv-04438-AT-BCM (herein, the “Morgan case”).

3. Attorney Sholder responded to my email and thereafter we exchanged several emails and also had at least three telephone discussions on the merits of the claims at issue in this case and did not reach a resolution.

4. We filed this action on February 27, 2022. We filed at that time a Statement of Relatedness (ECF 3) advising of some factual connections between this case and the Morgan case because Defendants here are involved in selling licensing rights to artwork to which Morgan claims copyrights when in fact it is alleged that they well know they have no such copyrights. The Honorable Judge Torres presiding over the Morgan case declined this case as not related. (Docket Entry on 2/28/2022)

5. After we initiated this case, we engaged in settlement discussions in the Morgan case that included discussions of whether a global settlement could be reached that would include resolving this case. In fact, counsel for Morgan insisted in writing that no settlement would be agreed to by Morgan if we did not agree to dismiss this case against ARS and Ms. Hicks. Because of those negotiations, we did not immediately serve Defendants here. On Friday, May 20, 2022, settlement discussions terminated and so we sought to arrange service of Defendants the following week before the 90-day deadline.

6. I note tht in her affidavit, Ms. Hicks calls us “liars.” We have not “lied” about anything and nobody from our law firm has ever spoken with the process server leaving the summons and complaints at the ARS office. I do not know whether he left those papers with Ms. Hicks or someone else but it appears that he left it either with Ms. Hicks or with a person of suitable age and discretion.

I declare under the laws of the State of New York and the United States of America that the foregoing is true and correct.

Executed this 30th day of June, 2022 in Boston, Massachusetts.

/s/ John J. E. Markham, II
John J. E. Markham, II (JM4744)
MARKHAM READ ZERNER LLC
One Commercial Wharf West
Boston, Massachusetts 02110
Tel: (617) 523-6329
Fax: (617) 742-8604
jmarkham@markhamreadzerner.com